IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2011 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NATHUBHAI SOMABHAI

Versus

DR.THAKORBHAI D RANA B/H.DR.RANA NURSING HOME

Appearance:

1. Special Civil Application No. 2011 of 1993

MR BJ JADEJA for Petitioners

None present for Respondent

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 01/08/2002

ORAL JUDGEMENT

#. Heard learned counsel Shri Jadeja for the petitioners. Though served no one was present for the

sole respondent.

#. Learned counsel Shri Jadeja for the petitioner submitted that the learned Tribunal committed grave error in dismissing Revision Application No.TEN.B.S.39/91 filed by the petitioners before it only on the ground of limitation without going into the merits of the case. He submitted that by dismissing the petition on the technical ground like limitation, the Tribunal has committed grave error instead of doing substantial justice the learned Tribunal proceeded to decide the matter on technical grounds, therefore, he submitted that the impugned order at Annexure-C passed by the learned Tribunal be quashed and set aside and the matter be remanded to the learned Tribunal to decide it in accordance with law.

#. In support of his submission Mr.Jadeja, learned counsel for the petitioners placed reliance on the judgment of the Hon'ble Supreme Court in case of Collector, Land Acquisition, Anantnag Vs. Mst.Katiji reported in AIR 1987 SC 1353.

#. Having gone through the impugned judgment and order dated 2.11.1992 passed by the learned Tribunal, I am fully convinced that the learned Tribunal has committed grave error in dismissing the revision petition of the petitioner merely on the ground of limitation without going into the merits of the case thereby caused serious prejudice to the petitioner. It is true that the revision petition was filed after a long time after expiry of limitation period but sufficient cause was shown for filing revision petition late before the Trial Court. It would be better if the learned Tribunal after condoning the delay in filing revision petition late decide the matter on merits, more particularly, when petitioners were poor tenants occupying the land for more than last four decades. In case of Mst.Kataji (supra) Hon'ble Supreme Court has criticized the approach of the courts in throwing out the meritorious cases in this manner.

#. In view of the above, I am of the considered opinion that the learned Tribunal has committed grave jurisdictional error in dismissing the revision petition filed by the petitioner only on the ground of limitation. Hence this petition is allowed. The impugned order at Annexure-C dated 20.11.1992 passed by the learned Tribunal is hereby quashed and set aside and matter is remanded to the learned Tribunal with direction to restore the revision application No.TEN.B.S.39/91 to the

file at its original number and decide the matter on merits strictly in accordance with law. This is an old matter, therefore, learned Tribunal shall decide the same as early as possible. Till then the petitioners shall not be dispossessed from the land in question. Rule made absolute with no order as to costs.

(B.J.Shethna, J.)

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